SB586

Measure Title:	**RELATING TO PSEUDOEPHEDRINE.**
Report Title:	**Pseudoephedrine; Prescription Required**
Description:	**Adds pseudoephedrine to the list of schedule III controlled substances; repeals the sale of pseudoephedrine without a prescription and related provisions regarding transport of the drug.**
Companion:	
Package:	**None**
Current Referral:	**HTH/CPN, JDL**

NEIL ABERCROMBIE
GOVERNOR

JODIE MAESAKA-HIRATA
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STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

No. _____

TESTIMONY ON SENATE BILL 586
A BILL FOR AN ACT RELATING TO PSEUDOEPHEDRINE
by
Jodie Maesaka-Hirata, Interim Director
Department of Public Safety

Committee on Commerce and Consumer Protection
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

Committee on Health
Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

Thursday, February 10, 2011, 8:30 AM
State Capitol, Room 229

Chairs Baker and Taniguchi, Vice Chairs Green and Nishihara, and Members of the Committees:

The Department of Public Safety (PSD) supports the intent of Senate Bill 586 that proposes to make pseudoephedrine and pseudoephedrine containing products, a Schedule II controlled substance. PSD feels that the Schedule II designation in not warranted, and would not allow patients to obtain refills on their pseudoephedrine prescriptions. PSD prefers the language in Senate Bill 40 that would make pseudoephedrine and pseudoephedrine containing products a Schedule III controlled substance, allowing physicians to add refills on these prescriptions and at the same time have these sales tracked by Hawaii's

electronic prescription monitoring program.

Thank you for the opportunity to testify on this matter.

HAWAII FOOD INDUSTRY ASSOCIATION (HFIA)
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DATE: Thursday February 10, 2011 TIME: 8:30 a.m. PLACE: CR 229

TO: COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair; Senator Brian T. Taniguchi, Vice Chair

COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair; Senator Clarence K. Nishihara, Vice Chair

FROM: Hawaii Food Industry Association - Lauren Zirbel, Government Relations

RE: SB 40 and SB 586 RELATING TO PSEUDOEPHEDRINE

Chairs & Committee Members:

In opposition.

We estimate that upwards to 100,000 citizens and tourists in Hawaii would be required to visit a doctor if a prescription were required to purchase pseudoephedrine products. **This would exacerbating current provider shortages through the resulting physician office visits.**

We estimate sales of pseudoephedrine in Hawaii to be around 250,000 packages.

Most meth is imported into the U.S. as a finished product. Approximately 20% is sourced from the U.S., with 80% from "superlabs" and less than 20% from small labs.

Electronic Tracking of PSE Sales Presents a Real Solution for Combating Meth Abuse. **E-logs provide real-time approval or denial of PSE purchases at the point-of-sale, creating no access barriers for the 19 million American households that purchase**

non-prescription cold and allergy medicines to treat their symptoms.

E-logs enable law enforcement to track real-time activity and search histories, thus identifying "smurfing" operations and labs that would otherwise go undetected. For example, electronic tracking led to 70% of meth lab busts in key Kentucky counties, and reduced illegal sales by more than 90% in a Florida pilot. Ten states have enacted laws that require electronic tracking of PSE sales: Alabama, Arkansas, Illinois, Iowa, Kansas, Kentucky, Louisiana, Missouri, Oklahoma, and Washington.

Law enforcement officials have testified before members of Congress about the effectiveness of e-logs, and communicated their concerns that a prescription-only policy would fail to limit PSE sales or enable meth lab detection.

Federal law currently limits all PSE-containing OTCs to behind the counter, with sales per customer of no more than 3.6 grams per day and 9 grams per 30 days, and requires purchasers to show ID and sign a logbook.

Electronic tracking allows retailers to block illegal sales and enhances law enforcement's suppression and investigative efforts. **Establishing a multistate electronic tracking system for medicines that contain PSE will prevent smurfing across different retailers, even across state lines, and provide a highly efficient law enforcement tool. At the same time, it will create no new barriers for the millions of cold and allergy sufferers looking for relief.**

E-tracking can also be combined with a state's meth conviction records. Oklahoma became the first state to enact a law prohibiting sales of PSE to individuals with meth convictions. State officials used their tracking system to identify individuals who had been blocked from making illegal pseudoephedrine purchases and discovered that as many as 60 percent of those being blocked had prior criminal records, many for drug charges. Now Oklahoma will deny any sales of pseudoephedrine to those individuals, even within otherwise legal quantity limits.

What is the Downside of Rx pseudephedrine?

Unfortunately, reducing or cutting off supply does not guarantee a reduction in demand or use. Mexico, for example, banned pseudoephedrine nearly three years ago. Yet the country is once again the "primary source of methamphetamine" in the U.S., according to the Justice Department's National Drug Intelligence Center's 2010 threat assessment. In fact, Oklahoma estimates that 70 percent of the meth in their state is from Mexico, in a potent, smokeable form called "ice."

Despite extreme actions taken by the Mexican government, drug traffickers and meth cooks have simply found alternative ingredients to use, such as phenylacetic acid, or they illegally smuggle pseudoephedrine to keep meth production viable and profitable.

What is the cost to consumers and taxpayers?

- If only half of the estimated 16 million Americans who use pseudoephedrine each year went to a doctor once a year to obtain a prescription for pseudoephedrine, this would **add three quarters of a billion dollars in healthcare costs** for office visits alone.

- Restricting access to pseudoephedrine products would also decrease sales tax revenues in many states, as over-the-counter medications are subject to sales tax while prescription medications are not.

- Medicaid programs and state employee health and retiree insurance plans would likely face an average of $11.5 million in added costs for increased provider visits and provision of prescription pseudoephedrine.

The Good News:

The OTC industry offering to pay for this system! The Consumer Healthcare Products Association (CHPA)—the trade association representing U.S. manufacturers of nonprescription medicines—supports a multistate electronic tracking system in retail outlets that will monitor all over-the-counter (OTC) PSE purchases in real-time to prevent criminals from exceeding legal limits. Providing an enforcement mechanism for the purchase limits is the best way to curb the diversion of PSE for meth production. States have been passing laws requiring such systems, but in some cases, the laws do not take effect unless funding for them is provided. States began asking for industry support, and industry agreed to help.

Thank you for the opportunity to provide this testimony.

The following is a draft of Model Pseudoephedrine Electronic Tracking Legislation.

Model Pseudoephedrine Electronic Tracking Legislation

(a) (1)A retailer shall not sell to the same person, and a person shall not purchase, products containing more than three and six tenths (3.6) grams per day or more than nine (9) grams per thirty day period of ephedrine or pseudoephedrine base, or their salts, isomers, or salts of isomers. The limits shall apply to the total amount of base ephedrine and pseudoephedrine contained in the products, and not the overall weight of the products. (2) Nonprescription products containing pseudoephedrine or ephedrine shall be maintained behind the counter or in a locked case where the customer does not have direct access.

(b) The retailer shall require any person purchasing a nonprescription product that contains pseudoephedrine or ephedrine to present valid government issued photo identification at the point of sale. The retailer shall record the name and address of the purchaser; name and quantity of product purchased; date and time purchased; and purchaser identification type and number, such as driver license state and number, and require the purchaser's signature in a logbook.

(c) Beginning January 1, 2012, a retailer shall, before completing a sale under this section, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI). Absent negligence, wantonness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales tracking system in accordance with this subdivision shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

(d) If a retailer selling a nonprescription product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the retailer shall maintain a written log or an alternative electronic recordkeeping mechanism until such time as the retailer is able to comply with the electronic sales tracking requirement.

(e) NADDI shall forward state transaction records in NPLEx to the appropriate state agency weekly, and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the state as authorized by the agency.

(f) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in this section. The seller shall not complete the sale if the system generates a stop sale alert. The system shall contain an override function that

may be used by a dispenser of ephedrine or pseudoephedrine who has a reasonable fear of imminent bodily harm if they do not complete a sale. Each instance in which the override function is utilized shall be logged by the system.

(g) A violation of any provision of this section is a Class A misdemeanor, punishable by fine only. If a product is dispensed in violation of subsection (a), the owner or operator of the wholesale or retail establishment dispensing
the product shall be in violation of subsection (a).

(h) This section does not apply to a person who obtains the product pursuant to a valid prescription.

(i) This section shall supersede any local laws or ordinances regulating sales of products containing pseudoephedrine or ephedrine.

To: Committee on Commerce and Consumer Protection 2/7/2011
Committee on Health
From: Patrick Adams, Rph
Re: SB 40 and SB 586

Honorable Baker and Committee Members,

In opposition to: SB 40 and SB586

I am a Board of Pharmacy member and Director of Pharmacy for Foodland and don't think it is the best interested of the people of Hawaii for psuedoephredrine to be a CIII medication. The general public will incur an unnecessary cost to obtain a medication that is safe for self-use. Every sale will result in a physician visit but the basis of the physician visit appears to be for record keeping purposes. Psuedoephedrine does not meet the requirements as set forth by the Durham-Humphrey Amendment of 1951 as a legend medication since Psuedophedrine is not considered too dangerous for use unless under the supervision of a physician. Historical evidence has shown that psuedoephedrine is safe for consumer use as an OTC medication therefore the issue appears to be the abuse potential as drug substrate. I believe a change of psuedoephedrine status puts additional workload on an already stressed system of prescription providers and a financial burden on the Hawaii citizens. In addition I don't believe this will change the abuse or the ability to manufacturer Methamphetamine to a greater degree than we have already seen since changing pseudoephedrine to a behind the counter sale.

I agree that the abuse potential for psuedoephrine is of concern but as a substrate of a dangerous medication not as the medication is sold to the general public. This abuse potential has made the control of the medication an important part of public safety and I believe the present system controls and limits the sale of psuedoepphrine without the financial burden to the public and to the health system. Since the record keeping is the real purpose in changing psuedoephedrine to a CIII, I have two possible solutions that would fulfill the record keeping need without requiring a physician visit:

1. The present law requires a consumer to request psuedoephedrine from a pharmacy. The pharmacy collects the consumers information, checks the psuedoephedrine log to insure the consumer is within buying limits, dispenses the medication and collects a signature. Pharmacies could be required to file this information in a database that would be forwarded to the NED for inspection to insure consumers are not using multiple pharmacies.

Or

2. Change Psuedoephedrine to a CV medication but allow the pharmacist to dispense without a prescription on a signature log that we presently are using. This would forward the records to NED through the Control Medication Log that the NED already receives but would take the prescription requirement away. This is how many states have controlled medications like paregoric and codeine cough

medicine. Specifically Washington State controls codeine cough medicine in this way.

Since 1951 when legend medications were established things have changed and we are starting to see some issues with the two classification medication system. We will continue to see these reclassification issues in the future as we did with emergency conception and we should be looking ahead to solutions that fit better into contemporary times. I believe there is a need to address the danger and abuse potential of medications and put into place a system that addresses the safety of the consumer as well as their ability to pay. Hawaii citizens make most psuedoephedrine sales legally with legal intent. Many of these citizens will be denied this medication if they are required a physicians visit to obtain it due to financial limitations. This includes our children and our parents. I would ask the committee to look for a different solution in regard to psuedoephedrine.

Sincerely,

Patrick L Adams, Rph
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COMMITTEE ON COMMERCE AND CONSUMER PROTECTION
Senator Rosalyn H. Baker, Chair
Senator Brian T. Taniguchi, Vice Chair

COMMITTEE ON HEALTH
Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

SB40 & SB586

DATE: Thursday, February 10, 2011
TIME: 8:30 a.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

OPPOSE!

Lets be Honest. True, The legislature finds that Act 193, Session Laws of Hawaii 2005, was enacted to control access to pseudoephedrine - a key ingredient in ICE, Methamphetamine HCL - and a contributor to Hawaii's illegal drug trade.

Pseudoephedrine can be easily used as a precursor in the synthesis and manufacture of ICE, Methamphetamine HCL and should be controlled.

ICE, methamphetamine is bad but pseudoephedrine is good. When introduced in the 1940's it was considered a "cure for the common cold". Pseudoephedrine has been non-prescription OTC for over 60 years with no public harm.

But pseudoephedrine is not a Schedule III drug according to the legal definitions in the Law. Pseudoephedrine is not associated with any mental, emotional or physical dependency.

The State but not the Feds has also limited the distribution of the parent herb, Ephedra, common name, Mormon's Tea. Mormon's can not drink coffee or black tea, I'm guessing that they drank Ephedra since it's called Mormon's Tea. Ephedra has been G.R.A.S. Generally Recognized as Safe. Until the Feds started making up news stories like Marijuana Madness. Works every time. The Big Lie technique.

These are all State Laws because the Federal Government lacks the power to proceed.

You need to find a more successful and legitimate way to control your drug problems other than harming the public health.

If the current laws don't work why would going further down the wrong road faster and more dangerously be any better?

Pseudoephedrine is one of the few medicines for URI that actually works. [not good for men with prostate problems]

Your Old Testament Crime and Punishment isn't working with your drug problem.
Maybe you should try the New Testament Jesus methods of forgiveness, compassion and healing.
That seems to be working better Worldwide.

Hard Drug Laws only benefit the Black Market and the Criminal Industry and their co partners Law Enforcement.

Hard Drug Laws do not benefit Society or the individual only crime and criminal organizations.

If Hard Drug Laws worked you wouldn't be hearing this bill

Because you are hearing this bill, Q.E.D. Hard Drug Laws don't work.

For example, it takes an average of 7 attempts to quit Tobacco, why do you expect the Drug Courts to work on the first one or two tries?

There is no Cinderella story here, the shoe doesn't fit and stronger punishment hasn't worked already.

Harming the public health isn't a successful way of controlling methamphetamine demand, production and use.

When diet pills were prescribed like candy there wasn't any problems from any illegal drug trade and "meth head" crash cases were rare. Those days are gone with the prohibition of diet pills. Smoking is about equal in absorption rate as injection, crack, coke, meth and ice. Wonder what the drug problem would be like of CIA Black Ops had a different funding stream other than illegal cocaine sales. History channel reports that Hitler's went even more crazy when he moved up from cocaine injections [Sherlock Holmes was a cocaine addict (Quick, Watson, the needle.) as was Sigmund Freud.] to methamphetamine. After this change in his drug of choice, his Generals plotted to assassinate him; evidently, he went even too crazy for them, the Nazi command. NOW THAT'S GOT TO BE A VERY BAD DRUG, if it is too mean for even the Nazi command.

Rehab could be enhanced to solve the drug problem.

I suggest you leave BAD ENOUGH alone and not go down the wrong road worse.

Dr. Myron Berney, ND LAc
MahaSiddha MahaSukha